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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 417.

THOMAS A. BALDWIN, Thomas A. Baldwin, Executor of of the Will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the Estate of Carrie I. Baldwin, With Will Annexed, *Appellants*,

vs.

STATE OF MISSOURI, *Appellee*.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR AND APPELLEE.

STRATTON SHARTEL,
Attorney-General of Missouri.
LIEUTELLUS CUNNINGHAM,
Assistant Attorney-General.
A. M. MEYER,
Assistant Attorney-General.
Counsel for Appellee.

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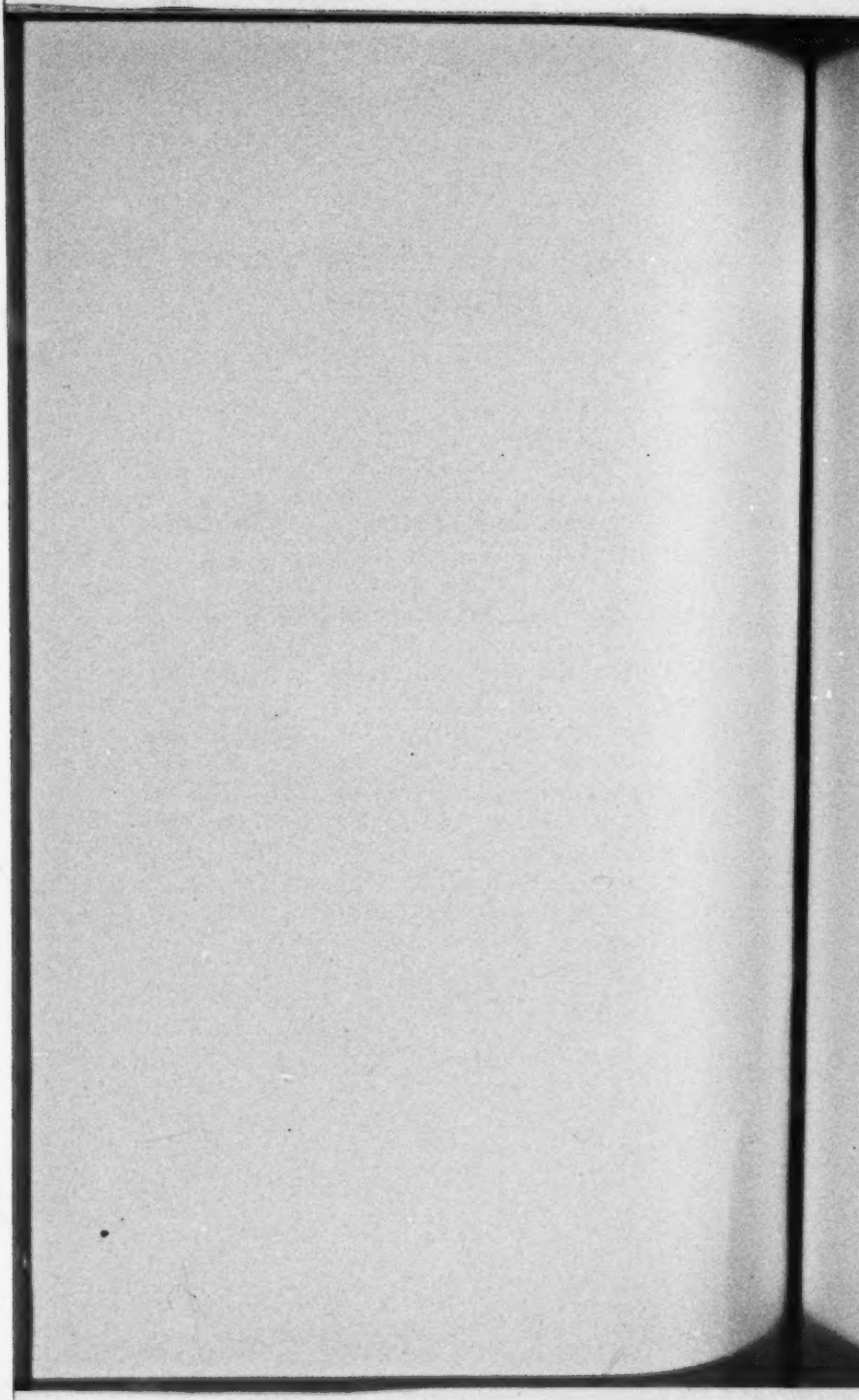

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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR AND APPELLEE.

STATEMENT.

Carrie Pool Baldwin died testate in the State of Illinois. Her will was probated in that state and her son and only heir was the only legatee under the will. A portion of the estate consisted of Missouri real estate. Concerning the tax measured by this portion of the estate there is no controversy. The remaining items of the estate in Missouri were of three classes, with amounts as follows:

United States Government Bonds (Reg.)..	$2,000.00
Bank Deposits.....	$17,015.75
Notes.....	$66,882.34

All of these notes were secured by mortgages on Missouri real estate except items Nos. 5, 20, 21, 26 and 29 of the inventory, totaling $8,513.50. The notes so secured were therefore $58,368.84 in total amount.

Upon these items the State of Missouri assessed a succession tax measured by the value thereof, and that tax was sustained by the Supreme Court of Missouri.

There is no evidence that any of these items were merely temporarily in Missouri. In fact the record shows that they were permanently and indefinitely located there.

SUMMARY OF ARGUMENT.

I.

A.

Succession and inheritance taxes may be measured by the value of bank deposits located within the state, and collected against the estates of non-resident decedents without violating the provisions of the Federal Constitution or the 14th Amendment thereto.

Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.

B.

This case, so far as it relates to a succession tax measured by the bank deposits in Missouri is distinguishable from the case of Farmer's Loan and Trust Company vs. Minnesota, cited *post*, and it is not necessarily within the principle criticized in that case as having formed the basis of the decision in the case of Blackstone vs. Miller, *supra*.

To sustain the tax in this case it is not necessary to say that a chose in action necessarily has a situs for taxation purposes at the domicile of the debtor, nor is it necessary in order to sustain the tax, to say that the Fourteenth Amendment does not prevent the taxation of the same property by different states upon inconsistent principles.

Farmer's Loan and Trust Co. vs. Minnesota, 50 S. Ct. 98, 280 U. S. 204.

II.

A.

Succession and inheritance taxes may be measured by the value of United States Government Bonds of a non-resident decedent where the same are found within the jurisdiction of the state levying the tax.

Blackstone vs. Miller, *supra*.

B.

On this phase the instant case differs from the case of Farmer's Loan and Trust Company vs. Minnesota (*supra*) in that here the evidences of debt were actually present in Missouri.

III.

A.

Succession and inheritance taxes may be measured by the value of promissory notes secured by mortgages on Missouri real estate and owed by residents of Missouri where the notes and securities were in Missouri, even though the same belonged to the estate of a non-resident decedent.

In re Merriam's Estate, 147 Mich. 630, 111 N. W. 196 —L. R. A. (N. S.) 1104, 118 Am. St. Rep. 561, 11 Ann. Cas. 119;

Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.

B.

On this phase also, the instant case is distinguishable from the Minnesota case, *supra*, and to sustain the tax here would not conflict with the principles upon which that case was decided.

IV.

As to the unsecured notes, which were present in Missouri and are sought to be taxed, they probably stand on the same footing as the bank deposits treated under Point one, save that the record does not disclose that any evidence of indebtedness issued by the bank to the decedent were found in Missouri.

V.

All of the items treated under Points I, II, III and IV are within the taxing statute as construed by the Supreme Court of Missouri.

State vs. Baldwin's Estate, 19 S. W. (2nd) 732.

The statute which imposes the tax is Section 558 of the Revised Statutes of Missouri for 1919, and reads as follows:

> "Sec. 558. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporation, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act: *Provided*, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax."

ARGUMENT.

The case of Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, was, to some extent, relied upon by the Supreme Court of Missouri in sustaining the tax measured by each of the classes of items treated in the Summary. On its facts, that case presents an exact parallel only to the facts treated under Point I, above. While certain language in the opinion in the Minnesota case is inconsistent with the result in the Blackstone case, we do not believe that the actual holdings in the two cases are inconsistent. In fact, it is respectfully submitted that the position of the State of Missouri in the instant case is analogous to the position of New York in the Minnesota case rather than to the position of Minnesota itself in that case.

We submit that there is a principle which underlies all theories of taxation in Anglo-Saxon jurisprudence, which has not been fully discussed by this court with reference to this class of cases, which is decisive of this case, and in the application of which the results in the Blackstone and Minnesota cases are and should be reconciled.

We refer not only to the proposition that taxation of or measured by property should be based upon and germane to some right, duty or obligation which the sovereign levying the tax has with respect to the property or right taxed, but also to the principle that the tax should be proportioned to and germane to some benefit which the subject of the tax enjoys by reason of the existence of the sovereignty and the maintenance of its institutions.

If A. lives in Illinois and has his property there, he should make all of his contribution to the cost of government to that government which protects him in the enjoyment of that property. He should pay taxes which go to sustain the machinery by which he exercises his franchise

to the jurisdiction which permits him to vote. He should pay his automobile license fees to the state where he keeps and operates the automobile. He should pay his gasoline taxes to the state upon whose highways he consumes the gasoline, since that state alone is under a peculiar duty to maintain those highways.

An economic interest may receive benefits from the maintenance of two governments. The relative amount of security, protection and supervision afforded by each may and does vary. As a practical matter there may be and is a point where the benefits afforded by the one state are so small in the nature of things that the relationship is "too attenuated to constitute any reasonable basis" for jurisdiction to tax, as in the Minnesota case. At least it becomes so small that the imposition of the *same* tax upon that interest which the same jurisdiction imposes upon interests receiving *all* the benefits of government from it, offends the sense of justice and fair dealing. To phrase the matter another way, the double taxation which offends the sense of justice is that which results finally in the imposition of twice as much taxes as other property pays for the same benefits. Such a situation, while we do not believe it is within a fair construction of the Fourteenth amendment does seem improper. But it seems equally unjust or more so to say that the jurisdiction which gives the least benefits should receive all of the *fair* share of the cost of government as contributed by that property.

In the Minnesota case all the benefits attaching to ownership of the property were secured to it by the laws of New York, except the continued willingness to pay the debt, which was assured by common honesty and the Constitution of the United States more than by any law of Minnesota, that willingness having already matured into a contract to pay.

In the instant case every substantial benefit which the property received from the existence of government, existed and continued by virtue of the law of Missouri except the

bare right of the decedent to own the choses in action constituting the Missouri estate.

As a matter of strict logic it seems to us that there are cases where a state, upon this theory, would be justified in levying upon property not solely benefited by its laws and institutions a tax equal to seventy-five, fifty, twenty-five or one per centum of the amount of taxes levied upon similar property which derived 100% of the total benefits of government from the same jurisdiction. The corrolary proposition is that some other state or states would be entitled to the remainder of whatever tax was economically justifiable.

No reason is perceived why the legislatures of the states could not make reasonable legislative findings of the proportionate amount of benefits enjoyed by property of the character treated in this record, compared with other property wholly subject to and protected by their respective laws and institutions, and prorate the tax accordingly.

No reason is perceived why jurisdiction to tax should be regarded as either whole or non-existent. It is not necessary, in order to prevent the kind of discrimination aimed at in the Minnesota case, to deny the power of taxation altogether as the only alternative. Upon a similar theme but in another connection, one of the learned Justices of this Court said: "The power to tax is not the power to destroy while this court sits. This court can prevent an attempt to discriminate or otherwise go too far without wholly destroying the power to tax."

Of course, in the nature of tangible property it could not exist in a multiple of close relationships to different jurisdictions in the same way that intangibles can do so, except under extraordinary circumstances not now comprehended. Thus we submit that the principle for which we contend extends to and conforms to the ruling in the case of Frick vs. Pennsylvania, 268 U. S. 473, 45 S. C. 603, 69 L. Ed. 1058, and supporting cases.

No doubt a distinction must be made between the theoretical and the practical, even assuming that the theory advanced is logically sound. Perhaps it is impracticable to attempt to prorate the tax in proportion to the benefits, but if this is true at least the power to tax ought to be based upon benefits rather than upon a legal fiction already found to be inapplicable to tangible movables and which was originally devised for a purpose having nothing to do with taxation. Certainly the principle for which we contend is the basis of the ruling in the Frick case, rather than the fiction of law, and no reason is perceived why it should not be extended to intangibles if applicable in practice.

If for any reason, practical or logical, the court adheres to the view that not more than one jurisdiction may tax the same economic interest, at least the state which affords the greatest number of benefits to the particular subject of the tax ought to be the one which is permitted to exercise the power. Fixing the taxable situs at the domicile of the decedent makes the state where the active substantial benefits of government are derived dependent upon transient circumstance or the caprice of the owner for revenue to support the institutions which confer those benefits.

The State of Missouri maintains a probate court system for the administration of estates. Whatever the figure may be, *some definite, ascertainable proportion of the total business handled through that system arises from the intangible personality of non-resident decedents.* Whatever that proportion may be it seems unfair to compel Missouri to permit the settlement of foreign estates therein and pay the cost attributable thereto without any "*quid pro quo.*"

In order to protect the bank deposits of the decedent, Missouri maintains a Department for the supervision and liquidation of banks. It maintains sheriffs and police and prosecuting officers to apprehend and punish the felon who might steal or embezzle those funds. It maintains courts in which the felon may be tried and machinery for extradition should he flee the jurisdiction, and a prison in which he would be confined if convicted.

The same observations apply had the notes or bonds in question been stolen or embezzled from the safe deposit boxes in which they were lodged. Missouri maintained recording officers where the mortgages securing the notes might be recorded and titles traced and assured, courts where suits must have been brought upon the notes. The very fire departments were necessary to the security and enjoyment of the rights of property of the decedent. As a practical matter, loss of the evidences of the choses might mean the loss of the debts, since debts cannot be collected from an unwilling debtor unless their existence is established by a preponderance of the evidence. These benefits could not be denied to a citizen of another state, and if the state is compelled to support these institutions for non-residents without recompense, then it may be well said that every one now has equal protection of the laws and is entitled to due process except the people of the states.

None of these bank deposits could have been lost in a bank failure in Illinois. None of the money, notes or bonds could have been stolen, embezzled or destroyed by fire in Illinois. Not an item of these intangibles could have been reduced to a chose in possession by a suit brought in Illinois or a demand made there. No criminal trespassing against the property could have been prosecuted in Illinois.

It has been said that the tax in question is a tax upon the *transfer* rather than upon the property. The majority opinion in the Minnesota case seems to regard this distinction as of no moment. After all it is the property which is transferred, not the decedent. It is the property which descends, and not the domicile. But if Missouri had no statute, as it has no constitutional provision, permitting the devolution of property, or if no heirs or legatees claimed the same, it would be the property which would escheat, and we submit that it is because of this last fact that the tax is a tax upon the transfer and that a real basis for the distinction exists which probably does not exist with respect to any other kind of taxes.

CONCLUSION.

We respectfully submit that the judgment of the Supreme Court of Missouri should be affirmed.

STRATTON SHARTEL,
Attorney-General,
L. CUNNINGHAM,
Assistant Attorney-General,
A. M. MEYER,
Assistant Attorney-General
of Missouri,
Counsel for Appellee.